

wire mesh.^{37/} BellSouth's use of wallboard imposes significant costs that are not incurred when wire mesh cages are provided for collocation. Specifically, wallboard enclosures require separate heating and air-conditioning units and fire suppression systems, and may require more lighting than mesh units. Because there is no technical reason to provide only wallboard enclosures -- as evidenced by the other LECs' adoption of wire mesh construction -- BellSouth should be required to establish construction charges for wire mesh enclosures, and should allow collocators a choice between the two structures.

U S West offers both hard-wall and wire mesh cage construction options, and assigns identical environmental control costs to both.^{38/} As discussed above, however, wire mesh cages do not require separate heating, ventilating, and air-conditioning ("HVAC") and fire suppression systems. U S West's assigned HVAC cost of \$6,000.00 or \$8,000.00 for its wire mesh cages should therefore be disallowed. In addition, U S West does not separately identify the electric costs associated with the HVAC system, and does not identify at all the costs of its fire suppression systems. Absent a cost showing that breaks out these costs and removes them from the wire mesh cage construction charge, U S West's electrical costs of \$1,200.00 to \$2,900.00 should be disallowed.

In addition, U S West inflates its cage construction costs by 20% for "contingencies," 20% for compliance with the Americans with Disabilities Act, and 15% for unspecified consultant duties.^{39/} No other LEC reflects such costs, and U S West has

^{37/} Several LECs offer to construct wallboard enclosures upon request, or require such enclosures if special circumstances dictate.

^{38/} U S West, pages 13-17.

^{39/} U S West, at pages 11-12.

completely failed to justify them. Each of these unsupported markups should be disallowed. Moreover, any cage construction costs associated with compliance with the Americans with Disabilities Act should already be included in the cage construction now recurring charge.

II. THE COLLOCATION TERMS AND CONDITIONS ESTABLISHED BY SEVERAL LECS ARE UNREASONABLE

A. Insurance Requirements

In MFS' opposition to the LEC's February 16 collocation filings, MFS found that most of the LECs established reasonable insurance requirements, with total required coverage of \$2 million or less. In contrast, three LECs established excessive insurance requirements: Ameritech (\$10 million), BellSouth (\$25 million), and Pacific Bell (\$5 million).^{40/} These three LECs have provided no additional information in their direct cases that can serve to justify these amounts. Instead, they rely on hypothetical discussions of potential liability, or discuss the levels of coverage that they or similarly positioned telephone companies maintain.^{41/}

These arguments fail to justify these LECs' departures from the rest of the industry. In the extreme cases of Ameritech and BellSouth, these carriers apparently seek to force each collocater to cover enough insurance to cover the catastrophic loss of the entire central office. Not only is such coverage excessive, it is wholly unnecessary -- the LECs maintain their own coverage for such contingencies. Because the LECs have provided no

^{40/} MFS Opposition, at page 38.

^{41/} Ameritech, at pages 30-31; BellSouth, at Exhibit 6, pages 11-14; Pacific Bell, at pages 79-82.

reasonable justification from their departures from the \$1-2 million coverage amounts that the other LECs have adopted as an industry standard, the Commission should require Ameritech, BellSouth and Pacific Bell to amend their tariffs to require insurance coverage not to exceed \$2 million.^{42/}

B. Assignment and Waiver of Liability

In its opposition to the LECs' February 16 tariff filings, MFS identified several LECs that established grossly disparate liability provisions in their tariffs.^{43/} Typically, these LECs assign to the collocator full liability for any loss arising out of simple negligence, but waive such liability for themselves. Some LECs apparently even waive their own liability for gross negligence or willful misconduct.

The LECs raise several different arguments against parity in liability provisions. U S West, which admits that it waives all liability in some cases and liability for willful misconduct in others,^{44/} simply argues that it treats all of its customers that way, has been doing so since before MFS was incorporated, and sees no reason to change.^{45/} Other

^{42/} Similarly, Pacific's refusal to allow self-insurance by collocators is unsupported. Even BellSouth, which otherwise has established the most unreasonable insurance provisions in the country, has agreed to permit self-insurance, provided that the collocator can demonstrate its financial ability to do so. BellSouth, at Exhibit 6, page 12. Prohibitions against self-insurance should therefore be disallowed.

^{43/} MFS Opposition, at pages 40-41.

^{44/} U S West, page 132.

^{45/} U S West, at pages 130-133.

LECs argue that waiver of liability is essential to keep LEC service costs down, and that acceptance of liability parity with collocators would endanger universal service.^{46/}

These arguments are irrelevant. The policy behind the Commission's collocation rules is to foster the uninhibited interconnection of CAP, interexchange carrier ("IXC") and private networks with the LECs' networks. Parity among the network operators is essential if the Commission's collocation policies are to have the procompetitive effect they were designed for. Collocated CAPs and IXCs are not customers in the traditional sense, they are co-carriers that operate interconnected networks, with the same service obligations, and the same concerns over service quality and cost that the LECs have. LECs must not be allowed to impose upon these carriers (and competitors) liability costs that they eschew for themselves.

The FCC traditionally has exercised jurisdiction over liability waiver and assignment in dominant carrier tariffs,^{47/} and its exercise of such jurisdiction in the instant case is entirely appropriate. Moreover, the LECs' arguments that sharing reciprocal responsibility for gross negligence and willful misconduct with collocators will adversely affect ratepayers is wholly without merit. The amount and cost of the facilities that a collocator may place in a central office are limited, and any liability attached to LEC-inflicted damage upon such facilities is similarly limited. Moreover, as the LECs make clear in their direct cases, they retain adequate levels of insurance to cover any foreseeable claim for damages arising out of a collocation arrangement. Finally, the Commission has the

^{46/} E.g., Bell Atlantic, at page 58; Pacific, at page 84.

^{47/} AT&T Communications, 3 FCC Rcd 6409 (1988).

authority to disallow LEC losses that are negligently or wastefully incurred,^{48/} thus ensuring that losses caused by LEC gross negligence or willful misconduct will not be borne by regulated ratepayers.

For the foregoing reasons, the Commission should require that all LECs providing collocation adopt the following liability standards: (1) LECs should not be permitted to waive their own liability for gross negligence and willful misconduct for damages arising out of a collocation arrangement. Imposition of similar liability upon collocators is fully appropriate. (2) Virtually all carriers waive liability for consequential damages. LECs should not be allowed to use collocation as a means of imposing such liability on colocated CAPs and IXC's. (3) Potential liability should end when a collocator's arrangement is terminated and its facilities are removed from the central office.^{49/}

C. Termination of Service

U S West states that "[a]n interconnector will be in material breach with regard to EIC service if the interconnector is in default of its payment obligations with regard to any other tariffed service it purchases from U S West." In other words, under the terms of its tariff, U S West retains the right to terminate the expanded interconnection arrangement if the collocator fails to pay a charge for a service wholly unrelated to collocation.

^{48/} West Ohio Gas Co. v. Public Utilities Commission of Ohio, 294 U.S. 63, 66 (1935).

^{49/} Thus, Pacific Bell should be required to eliminate its tariff provision that imposes liability upon collocators for three years after the collocation arrangement is terminated. Such a provision may force collocators to maintain unnecessary insurance coverage during that three year period.

This provision is unreasonable because collocation represents an integral extension of the collocator's network, and termination of the collocation arrangement could disrupt a substantial portion of a collocator's operations. U S West's termination provision cavalierly places a collocator's network at risk for what otherwise may be a minor infraction of its tariff requirements for a wholly unrelated service.^{50/} As such, the provision is unreasonable. The Commission should therefore order U S West to revise that provision in its tariff to allow termination of the collocation arrangement only for nonpayment of collocation rate elements imposed by U S West.

III. PROHIBITIONS AGAINST COLLOCATED CROSS-CONNECTION TO LEC DARK FIBER ARE UNREASONABLE

Four LECs -- Bell Atlantic, BellSouth, Southwestern Bell and U S West -- currently offer dark fiber as a tariffed service. All of these LECs seek to prohibit collocated customers from ordering dark fiber to terminate at their collocated facilities. These LECs raise a number of arguments against providing dark fiber to collocated parties: (1) that, under the terms of their tariffs, dark fiber is provided to "customer premises" and a collocated space within a LEC central office is not defined as a customer premises; (2) that dark fiber is an optical transmission facility, and cross-connects to collocated facilities are only provided on an electrical basis; (3) that standards for network interfaces, transmission, interconnection, monitoring and testing have not been developed; (4) that dark fiber is a

^{50/} The Commission has found in the past that termination of one service premised on nonpayment of an unrelated service is not appropriate. E.g., AT&T 900 Dial-It Services and Third Party Billing and Collection Services, 4 FCC Rcd 3429 (1989).

facility, not a service; and (5) that the Commission, in a statement to the District of Columbia Court of Appeals, regarding a petition for a writ of mandamus filed by U S West, asserted that the collocation rules would not apply to dark fiber.^{51/} None of these arguments may justify the LECs' refusal to provide tariffed dark fiber service to collocated customers.

First, the argument that collocated parties may be refused dark fiber because a collocated point of presence is not a "customer premise" is semantic nonsense. LECs routinely define their services (including DS1 and DS3 services) as providing "local channels between customer designated premises and Telephone Company serving wire centers,"^{52/} yet they do not argue that this definition precludes provision of high capacity services to collocated customers. Moreover, LECs have for years been providing such services to IXC's that are collocated in their central offices.

Second, the fact that dark fiber provides an optical transmission path, while tariffed cross-connections are electrical hardly precludes provision of dark fiber to collocated customers. The vast majority of parties obtaining collocation will deploy fiber-optic cable.^{53/} In the typical collocation arrangement, the LEC routes the collocater's optical fiber to the collocated space, where it is terminated in the collocater's optical line

^{51/} See Bell Atlantic, at Attachment B, page 43; BellSouth, at Exhibit 6, pages 4-5; Southwestern Bell, at pages 32-34; U S West, at page 81-82.

^{52/} E.g., BellSouth Telecommunications, Inc., Tariff F.C.C. No. 1, § 7.2.9(A), page 7-49 (basic channel description for DS3 service).

^{53/} The exception to this rule is microwave-based collocaters, which will route their traffic from their roof-mounted antennas through the LEC central office over copper facilities.

terminating multiplexer. Dark fiber would be provisioned precisely in the same way.^{54/}

Rather than cross-connect charges, the LECs would terminate the fiber in the collocators' cage in exactly the same manner -- and at the same charge -- that they currently terminate a dark fiber cable in a customer's premise.

Third, the assertion that technical standards for dark fiber have not been established is obviously incorrect. The LECs have been providing dark fiber to dozens of customers for years, and these arrangements comply fully with the same technical standards that govern the deployment of fiber within the LEC central offices. Regarding monitoring and control functions, in all dark fiber arrangements, they are performed by the customer, which by definition supplies the electronics necessary to transmit signals over the fiber on both ends of the circuit.

Fourth, the "facility versus service" argument was raised by LECs during the Commission's dark fiber proceeding. In that context, LECs argued that dark fiber was a facility and not a service, and so the Commission lacked jurisdiction over it. Obviously, the

^{54/} Indeed, there is only one difference between the deployment of fiber optic cable in a typical collocation arrangement and a dark fiber arrangement: in the former the collocator owns and provides the cable, and in the latter the LEC owns and provides the cable. In every other respect, the arrangements are identical: the collocator owns the electronics at both ends of the cable, and the cable is routed into the central office and terminated in the collocator's cage in precisely the same way. Moreover, in the vast majority of dark fiber arrangements -- and perhaps in all of them -- the LEC runs the cable through one or more central offices in providing the connection between the two customer locations. The LECs do not argue differently: while BellSouth argues that its dark fiber arrangements do not "go through the main distribution frame or other CO equipment" (Exhibit 6, page 4), it does not argue that the fiber does not transit its central office. In fact, dark fiber facilities typically are routed through LEC central offices.

Commission rejected that argument. The LECs currently provide dark fiber as a fully tariffed service.

Fifth, the Commission's January 25, 1993 response to U S West's petition for a writ of mandamus does not prevent the Commission from finding, following consideration of the record in the instant proceeding, that the four LECs are required to provide dark fiber service upon request to collocated customers. Indeed, as discussed below, refusal to provide the tariffed service to collocated customers would be unreasonably discriminatory under the Communications Act.

Finally, none of the LECs has responded adequately to the Designation Order's requirement that they explain why their attempt to deny a tariffed special access service to collocated customers "is consistent with the Commission's statements in the Special Access Order and other proceedings."^{55/} The statements referenced in the Designation Order clearly establish an expansive definition of expanded interconnection that encompasses all LEC special access services (some of which must be offered intrally and others which must be offered upon request only). The LECs have presented no reasoned justification for excepting any special access service, including dark fiber, and, as with any other tariffed LEC special access service, refusal to provide such service to collocated customers would create an unreasonably discriminatory classification of customers, in contravention of Section 202 of the Communications Act. Therefore, the Commission should clarify that Bell Atlantic, BellSouth, Southwestern Bell and U S West -- and any other LEC

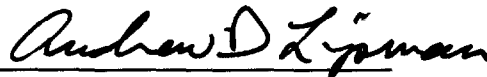
^{55/} Designation Order, 8 FCC Rcd at para. 38 (citing, inter alia, 47 C.F.R. §§ 64.1401(d)(2) & e(2), & § 64.1402(b)).

that tariffs dark fiber service in the future -- are required to deploy dark fiber to a collocator's collocated facilities upon request.

IV. CONCLUSION

For the foregoing reasons, the direct cases filed in CC Docket No. 93-162 fail to justify the special access collocation provisions established by the LECs in their interstate tariffs. The Commission should therefore prescribe just and reasonable rates, terms and conditions for the LEC special access expanded interconnection tariffs, in accordance with the discussion contained herein.

Respectfully submitted,



Andrew D. Lipman
Jonathan E. Canis

Cindy Z. Schonhaut, Esq.
Vice President
Government Affairs
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Suite 300
Washington, D.C. 20007
(202) 424-7709

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Suite 300
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Attorneys for
MFS COMMUNICATIONS COMPANY, INC.

Dated: September 20, 1993

ATTACHMENT A

LEC Cost Of Money Factors

COST OF MONEY

	DS1/DS3 X-Connect Cable & Supp Recurring	DS1/DS3 X-Connect Cable & Supp NRC	DS1/DS3 X-Connect Equipment Function Recurring	DS1/DS3 Termination Equipment Recurring	DS1 X-Connect Provisioning Recurring	DS1 X-Connect Provisioning NRC	DS3 X-Connect Provisioning Recurring	DS3 X-Connect Provisioning NRC	DC Power Installation Function Recurring	DC Power Installation Function NRC
AMERITECH (1)	7.44%		7.44%	7.44%		0.00%		0.00%	0.00%	10.70%*
BELL ATLANTIC (2)	15.44%		13.76%	13.75%						7.44%**
BELLSOUTH (3)	12.15%		12.15%	12.23%@					13.99%	
NYNEX (4)	1.70%			1.70%						
PACIFIC (5)	6.28%		6.28%							
SOUTHWESTERN BELL(6)	0.00%	0.00%			10.67%	0.00%	10.54%	0.00%	0.00%	0.00%
U S WEST (7)	11.5%		11.50%	11.50%		11.50%		11.50%		11.50%

@ DS3 = 12.15%

0% = \$ amount shown on chart but no cost of money.

(if chart reflects, space left blank).*

Southwestern Bell filed sheets for all categories, even if rate/charge not applicable.**

- (1) The cost of money factor used in all cases was based on a weighted average cost of capital of 10.9%.
- (2) Bell Atlantic's cost of money was based on the costs in capital markets.
- (3) BellSouth's cost of money was based on the costs in capital markets.
- (4)
- (5) Pacific Bell cost of money varies by Central Office location with no justification for this methodology.
- (6) SWBT utilizes Bellcore's CAPCOST program to develop a levelized Cost of Money Factor which equals the net present value of the expected cost of money divided by the net plant in service for the account for which the factor is being developed. The Cost of Money derived in the TRP is generally lower than the Cost of Money percentage estimated by SWBT.
- (7) Cost of capital is composed of 13.4% estimated cost of equity and an 8.5% incremental cost of debt, weighted by U S West's projected future financing mix of 38% debt and 62% equity. (Reviewed quarterly and updated when cost of capital varies by 50 basis points).

COST OF MONEY										
	DC Power Generation Function Recurring	Entrance Facility Space Recurring	Entrance Facility Space NRC	Entrance Facility Installation NRC	Common Construction Function NRC	Common Construction Provisioning NRC	Interconnector Specific Construction Function NRC	Central Office Floor Space Function Recurring	Central Office Termination Equipment Function Recurring	Central Office Termination Equipment Function NRC
AMERITECH (1)		9.00%* 7.44%**	0.00%	0.00%	10.70%	0.00%	10.70%	10.70%	7.44%	
BELL ATLANTIC (2)		13.24%								
BELLSOUTH (3)	12.09%	12.15%					13.93%	13.87%		
NYNEX (4)	1.70%	1.70%						1.70%		
PACIFIC (5)	6.28%	0.0767 min 8.54% max						8.36% min 8.89% max		
SOUTHWESTERN BELL (6)	10.89%	14.43%		0.00%	0.00%		0.00%		0.00%	0.00%
U S WEST (7)	11.50%	0.00%	11.50%	0.00%	0.00%		0.00%	0.00%	11.50%	

Buildout
Equip Bay

* Conduit
** Riser

COST OF MONEY		
	Security Installation Function NRC	Active Security Function NRC
AMERITECH (1)	10.70%	0.00%
BELL ATLANTIC (2)		
BELLSOUTH (3)	13.93%	
NYNEX (4)		
PACIFIC (5)		
SOUTHWESTERN BELL(6)		0.00%
U S WEST (7)		0.00%

ATTACHMENT B

Bill For New England Telephone Power Charge

NEW ENGLAND TELEPHONE
P.O. BOX 111
BOSTON, MA 02111

New England Telephone

CUSTOMER SERVICE RECORD
(CSR) 617 K91-0001 383
09-09-93 PAGE 1
METROPOLITAN FIBER
ATTN RICH POTOCEK

BILLING INQUIRIES CALL
(617) 743-2097

CLS SVC BILL DAY ACCT DATE
X1Q 04 09-04-93

FOR TELCO USE
ICSC DFC B010
BDCUS

---ACCOUNT IDENTIFICATION---

FOR TELCO USE: ACNA MPL CCNA MPL LAT 128 TAR TAX

BILLED TO:

METROPOLITAN FIBER
ATTN RICH POTOCEK
ONE TOWER LANE
SUITE 1600
OAKBROOK TERR IL 60181

CUSTOMER SERVICE ADDRESS: METROPOLITAN FIBER SYSTEMS
1-
1-185 FRANKLIN, BOSTON, MA

SPECIAL HANDLING:

PRINT REQUESTS:

CONTAINS BILL
COPIES: 01

CONTAINS CSR
COPIES: 01

NEW AND TELEPHONE
F.O. BOSTON MA 02241

New England Telephone

CUSTOMER SERVICE RECORD

(CSR) 617 K91-0001 383

09-09-93
METROPOLITAN FIBER
ATTN RICH POTOCEK

PAGE 2

---SERVICES AND FEATURES---

SVC ESTBL	QTY	CODE	DESCRIPTION	TAX	AMOUNT	ACTVTY DATE
920311	CN		92MPL80001/PIU 00 /DES ESTNMAFRMB1			920311
920311	650	SP1CF	INTRA 100X X	12		920311
			.00 X 650		82.00	
920311	30	SP1PA	INTRA 100X X	12		920311
			13.17 X 30		395.10	
920311	100	SP1SS	INTRA 100X X	12		920311
			7.50 X 100		750.00	
			INTRASTATE SUBTOTAL		1197.10	
			CN SUBTOTAL		1197.10	
			INTERSTATE TOTAL		0.00	
			INTRASTATE TOTAL		1197.10	
			ACCOUNT TOTAL		1197.10	

NEW ENGLAND TELEPHONE
P.O. BOX 1224
BOSTON, MA 02114

New England Telephone

CUSTOMER SERVICE RECORD
(CSR) 617 K91-0001 383
09-09-93 PAGE 3
METROPOLITAN FIBER
ATTN RICH POTOCEK

---SUMMARY---

LAST COMPLETED ACTIVITY

930804 RSNP0321E PON

ACTIVITY LEGEND

* - SERVICE ORDER ACTIVITY
R - RATE CHANGE
M - MISCELLANEOUS
P - PERCENT OF INTERSTATE USAGE CHANGE

TAX LEGEND

TYPE	APPLICABLE CODE	EXEMPT CODE
ALL EXEMPT		A
FEDERAL	1	B
STATE	2	C

NEW ENGLAND TELEPHONE

P.O. Box 1000 New England Telephone
BOSTON, MA 02111

CUSTOMER SERVICE RECORD

(CSR)

617 K91-0001 383

PAGE

4

09-09-93

METROPOLITAN FIBER
ATTN RICH POTOCEK

---SUMMARY---

ENGLISH LANGUAGE GLOSSARY

CN
DES
PIUCONTRACT-CONTROL NUMBER
DESCRIPTION
PERCENTAGE OF INTERSTATE USAGESPICE
BPIPA
BPTSSCOLLOCATION - CABLE SPACE & CONDUIT-PER FOOT
COLLOCATION - DC POWER - PER AMP
COLLOCATION - SPACE ARRGMT - PER SQ FT

END OF RECORD

ATTACHMENT C

**MFS Letters Requesting Cost Detail For
New York Telephone Intrastate Collocation**

Metropolitan Fiber Systems, Inc.
One Tower Lane, Suite 1600
Oakbrook Terrace, Illinois 60181
(708) 218-7200 FAX (708) 218-0018

Andy
Lipman

November 5, 1991

Ms. Deborah Latona
New York Telephone
ICSC - Room 5-9
1155 Avenue Of The Americas
New York, New York 10036

Dear Deborah:

Please find attached executed Collocation License Agreements (CLA's) and the 50% estimated payment checks for the 37th, 50th, 56th, and Bridge Street New York Telephone (NYT) central offices.

While MFS has now executed CLAs for six (6) central offices, I am awaiting the following information from NYT.

- 1) Quote from NYT for a separate lateral entrance (including riser) at each of the six C.O.s. Each lateral and riser should provide maximum separation from the fiber meet point to the MFS cage. Furthermore, we request that each cable entrance be separate and distinct from the cable entrances used to bring NYT and other interconnectors' cable into the central offices.
- 2) Detailed line item cost data for all MFS collocated spaces, including re-curring and non-recurring costs.

Executing the CLAs for interconnection via New York Telephone's tariffed OTIS II service does not constitute -- and should not be construed as -- an admission that the rates and charges established in the OTIS II tariff are lawful or reasonable. Moreover, by this request, MFS does not prejudice its right to contest the rates and charges of the OTIS II tariff before the New York Public Service Commission, or any other appropriate regulatory body or court of law.

In fact, MFS believes that the collocation recurring and non-recurring rates quoted to MFS for each of the six NYT C.O.s, are completely excessive, unreasonable, and are significantly higher than rates that were quoted earlier to MFS. Also, earlier statements from NYT indicated that the \$7,500 fee would be credited towards the non-recurring fee to build-out the MFS space. Therefore, I am requesting NYT to provide MFS, within 30 days of the space being built-out, with formal detailed cost data for all items related to providing MFS with OTIS II service.

In addition, please provide me with an expected due date as to when each central office space will be available for MFS to occupy. To expedite this process I would like a written schedule provided to me by Wednesday, November 13, 1991.

MFS
METROPOLITAN FIBER SYSTEMS®

Ms. Deborah Latona
November 5, 1991
Page Two

Please contact me at 708-218-7263 if you should have any questions and thank you in advance for your assistance regarding these matters.

Sincerely,



Timothy T. Devine
Director, Product Marketing & Development

cc: Bob Davis - Nynex
Andrew Lipman - MFS
Valerie Wolff - MFS

MFS
METROPOLITAN FIBER SYSTEMSSM

Tim Devine

SWIDLER & BERLIN

CHARTERED
3000 K STREET, N.W.
SUITE 300
WASHINGTON, D.C. 20007-3851
(202) 944-4300

ANDREW D. LIPMAN
ATTORNEY-AT-LAW

DIRECT DIAL
(202) 944-4833
TELEX: 701131
TELESCOPIER: (202) 944-4296

February 19, 1992

VIA FACSIMILE (212) 997-2875

Ms. Deborah L. Latona
Manager, Collocation
New York Telephone
1155 Avenue of the Americas
5th Floor
Mailstop 5-9
New York, NY 10036

Dear Ms. Latona:

I am writing on behalf of Metropolitan Fiber Systems, Inc. ("MFS"), concerning New York Telephone's ("NYT") apparent difficulties in submitting in a timely manner a complete bill and cost data concerning MFS' physical collocation in NYT central offices.

MFS currently has established physical collocation arrangements in two NYT central offices, with the first physical collocation arrangement completed on November 1, 1991, and has signed Collocation License Agreements for four additional C.O.s. Although it has been 3½ months since the first of these arrangements was constructed, NYT has yet to submit a final bill for the construction costs of any of the collocation arrangements, despite repeated requests by MFS representatives. Failure to submit a bill within this time period is not commercially reasonable and raises various regulatory consequences.

As you are well aware, NYT requires the submission of a \$7,500 application fee and a downpayment of one-half of the estimated total cost for each collocation arrangement under the OTIS II tariff. To date, MFS has paid NYT, under protest, the requested amounts for six central office collocation arrangements -- a total of \$240,500. Moreover, NYT has informed MFS that the full cost of constructing an enclosed collocation working area will range from \$60,000 - \$74,000 per arrangement, meaning that MFS will be liable, under this formulation, for up to an additional \$195,500 for the collocation arrangements that have been constructed or ordered to date.

MFS repeatedly has complained to NYT that both its nonrecurring and recurring charges for OTIS II collocation are

Ms. Deborah L. Latona
February 19, 1992
Page 2

excessive, and bear no relation to costs. Indeed, NYT's attempt to impose a charge of almost half a million dollars for the construction of six 10' x 10' cage enclosures represents, in my estimation, an outrageous example of price gouging that characterizes many of the rates associated with OTIS II collocation. To date, MFS has paid the amounts required by NYT under protest in order to avoid lengthy delays in obtaining collocation with NYT.

NYT's delay in submitting final bills for the construction of collocation arrangements in six NYT central offices has served to prevent MFS from reviewing these costs in any meaningful detail and, if appropriate, contesting the charges before the New York Public Service Commission. We therefore must insist that NYT submit its final bills for the construction of the collocation arrangements within 30 days. Moreover, as Tim Devine and other MFS representatives have requested in past communications with you, MFS requires detailed cost breakdowns to justify the charges. Specifically, MFS requires detailed cost data concerning the following:

1. Labor hours and rates for the processing of the collocation applications for each central office.
2. Labor hours and rates and materials for the selection of the collocated space within each central office.
3. All materials used in the construction of the collocated spaces in each central office.
4. Labor hours and rates for the construction of the collocated spaces in each central office.
5. Any other miscellaneous costs or cost loadings reflected in the total bills.

Failure of NYT to respond to this request within 30 days will force MFS to seek the appropriate relief from the Public Service Commission and all other lawful means.

Ms. Deborah L. Latona
February 19, 1992
Page 3

I look forward to your personal and prompt attention to
this matter.

Sincerely,


Andrew D. Lipman

/sls
Enclosure

cc: G. Larry Cashion (Telesector Resources)
Robert J. Riorden (NYNEX)
Timothy G. Zakriski (NYPSC)
Timothy T. Devine (MFS)